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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,138	12/15/2003	Thomas E. Creamer	BOC9-2003-0081 (455)	3693
40987 7590 11/07/2008 AKERMAN SENTERFITT P. O. BOX 3188 WEST PALM BEACH, FL 33402-3188				
EXAMINER				
PATEL, HEMANT SHANTILAL				
ART UNIT		PAPER NUMBER		
2614				
MAIL DATE		DELIVERY MODE		
11/07/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/736,138

**Applicant(s)**

CREAMER ET AL.

**Examiner**

HEMANT PATEL

**Art Unit**

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 17, 2008 has been entered. Claims 1-5 are pending in this application.

### ***Response to Arguments***

2. Applicant's arguments filed September 17, 2008 have been fully considered but they are not persuasive.

3. **Regarding claim 1**, the Applicant has argued that "One embodiment of the invention, as typified by amended Claim 1, is a method of marking various types of audio content within an audio file" (emphasis added) (Remarks, pg. 3) and further argued that "Accordingly, Walters fails to disclose or suggest each and every element of Claim 1, as amended" (emphasis added) (Remarks, pg. 5). The Examiner respectfully disagrees. The claim 1 as presented has no amended limitation and this is further substantiated with claim status of (Previously Presented).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Walters (US Patent No. 6,453,281 B1).

***Regarding claim 1***, Walters teaches of a method of marking various types of audio content within an audio file comprising:

for each type of audio content (col. 27 ll. 15-20 type of lecture provided by each professor), defining a set of audio tags comprising an opening tag (Fig. 28, S1, S2, S3) and a closing tag (Fig. 28 corresponding E1, E2, E3);

associating the set of audio tags with a corresponding type of audio content (S1-E1 with SP1, S2-E2 with SP2, S3-E3 with SP3);

marking a starting location of the corresponding type of audio content within the audio file using the opening tag (S1 for SP1, S2 for SP2, S3 for SP3); and

marking an ending location of the corresponding type of audio content within the audio file using the closing tag (E1 for SP1, E2 for SP2, E3 for SP3) (col. 26 ll. 44-col. 28 ll. 39).

***Regarding claim 4***, Walters teaches of storing audio file in storage as digitized voice file (col. 9 ll. 10-24).

**Regarding claim 5**, Walters teaches of content including voice prompts (col. 27 ll. 46-52, ll. 55-60).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walters as applied to claim 1 above, and further in view of Hamel (US Patent No. 5,943,402).

**Regarding claims 2, 3**, Walters does not clearly teach of storing the tags (S1, S2, S3, E1, E2, E3) in the form of tones or waveform shapes in the file.

However, in the same field of endeavor, Hamel teaches of a method and a system to indicate and store in the audio file an acoustic bullet in the form of a tone (and hence its distinct waveform shape based on the specific frequency of the tone) and corresponding annotation to indicate the type of content in the audio file (Fig. 1 for system; Figs 2A-2G for method and Figs. 3A-3B for audio file and their corresponding descriptions).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Walters to use tones to indicate the type of content in the audio file as taught by Hamel in order to allow the user to manipulate audio content remotely using the ubiquitous keypad from a remote telephone.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent Application Publication No. 2002/0177914

Chase

US Patent Application Publication No. 2005/0066063

Grigorovitch

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEMANT PATEL whose telephone number is (571)272-8620. The examiner can normally be reached on 8:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on 571-272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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